Supreme Court, U.S.
FILED
001657 MAR 6 - 2001
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

JAMES J. ASKEW,
Petitioner,

v.

UNION PACIFIC RAILROAD CO., RAIL TERMINAL SERVICES, TEAMSTERS LOCAL 600, ET AL.,
Defendants.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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10 pp

QUESTION(S) PRESENTED

I. Within the parameter's of a discharge, grievance and arbitration procedures framed within a Collective Bargaining Agreement, if the employers evidence in support of the discharge is blatantly false, does that falsity serve, pro se, to add another dimension to the

Court's remedial responsibilities?

II. Did the Union by allowing the discharge in Violation of the National Master Freight Agreement (CBA) Article 46 and allowing the Company to falsely accuse Plaintiff of violating and committing a "Cardinal Act" as listed in the CBA, and discharge for Breaking unspecified Federal and State Laws, breech it's Duty of Fair representation?.

III. Did the Union by failing to make any effort on behalf of plaintiff to verify any and all statements and acts by the company during the grievance procedure and after Mr. List Deposition of 4/30/99 in which it learned first hand that the company through V.P. G.M. Mr. Mike List had blatantly lied in the course of events Breech DFR?. *See International Association of Machinist and Aerospace Workers Local 39, AFL-CIO (Roy G. Evans 24 Flra No. 39, 24 Flra 352, 353 (1986)*

IV. Did the Union by failing to act on plaintiffs behalf following the disposition of Mr. List where he admitted, he had blatantly lied in the course of the grievance procedure breech its duty of Fair Representation?

V. Did the Courts below fail to address the CBA Article 46 and allow issues to be brought into the procedures which were not covered by the CBA? (Namely, Sexual Harassment, Breaking of Federal or State Laws?)

VI. Did the Employer utilize an accusation of sexual harassment as a fraudulent, dishonest, camouflage and/or as a smoke screen, red herring, and/or cover up in order to justify its false reason's for plaintiffs termination?

VII. Is the plain unvarnished truth that plaintiff was wrongfully, retaliatory terminated because of protected activities ?

VIII. Did the Court's below fail to consider the totality of the circumstances?

LIST OF PARTIES

[ ] ALL PARTIES DO NOT APPEAR IN THE caption of the case on the cover page.

A list of all parties to the proceedings in the court whose judgment is the subject of this petition is as follows;

James J. Askew

(Plaintiff)

vs.

Union Pacific Railroad
Rail Terminal Services
Teamsters Local 600 I.B.T.
International Brotherhood of Teamsters
Washington D.C.

(Defendants)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from **federal courts:**

The opinion of the United States court of appeals at Appendix A to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States court of appeals at Appendix B to the petition and is

[ ] reported at unknown?; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Dec. 6, 2000.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1254(1).

Case filed within 90 days per 28 U.S.C. § 2101(e)

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____(date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257(a).

JURISDICTION AND VENUE

This is an action brought under the provisions of the National Labor Act of 1947.

} 301 and 29 U.S.C. } 185 (a)(c). This court has jurisdiction pursuant to the provisions of 29 U.S.C. } 185 (c), 28 U.S.C. } } 1331, 1337, 1367 (1995) and 42 U.S.C.} 2000e, *et seq.* (1995), because of federal question jurisdiction. The jurisdiction of this court is invoked under 28 U.S.C. } 1254 (1). 42 U.S.C. Sec. 12203 and FELA 45 U.S.C. Sec. 51 et seq.

As this case arises under Federal laws regulating Interstate Commerce , and Section 706 (f)(3) of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000 e5 (f)(3)

STATEMENT OF THE CASE

Plaintiff/Appellant was discharged on or about July 31, 1997 by an undated letter. The company stated for "Just Cause" under article 46 (CBA) and Discriminatory Acts Prohibited by Federal and State law. (Letter and Article 46 and 37 Attached) Company contended

that Sexual Harassment was a "Cardinal Act" (Dischargeable) as called for by the National Master Freight Agreement (NMFA) or (CBA) Collective Bargaining Agreement.

During the 3 Step grievance process the company made many false statements, to the various grievance panels willfully and intentionally in order to justify falsely, Plaintiffs termination in violation of the CBA.

The Union knowingly allowed the Union Steward to testify falsely, in support of the company's position, failed to allow plaintiff access to his accuser, failed to provide documents requested, allowed company more time than allowed by contract to process its investigation. The Union allowed termination without a warning letter as required by the CBA for "Just Cause". Allowed the company to testify Plaintiff had broken, Unspecified Federal and State laws, and a Company policy which did not exist, without verification.

Which is supported and admitted to in Mike List Deposition of 4/30/99.

The Courts below have failed to address the issue of breech of a Collective Bargaining Agreement and have been misled by opposing counsel to think this is a Sexual Harassment case. This show's the extreme measure's that have been used to hide the real and honest reason for the plaintiffs termination, which was purely a retaliatory act against plaintiffs legal acts which are protected by Law.

Even if Plaintiff was Guilty of this charge, according to the CBA which is very limited and specific on what reason's a person can be terminated without a warning letter states, "except in listed cases, he has to have a

warning letter prior to discharge". (Article 46.) The Contract Guide Interpretations which are precedent setting cases as acknowledged by the Union and Companies in there Statement of Policy (Attached) uphold plaintiffs position.

The Interpretations have been up held by the National Labor Relations Board as a intricate part of the CBA. A letter dated February 25, 1980 from the Dept. Of Labor to Plaintiff so states.

Rail Terminal Services (RTS) V.P. G.M. Mike List has Alleged that "He did not know of Mr. Askew prior to his decision to terminate Plaintiff".

(Court Of Appeals ruling Page 3 Last Paragraph)

However, Mr. List deposition of 4/30/99 page 7 Line 2-10 Mr. List states, " He is the Top Human Resources head and as such lower level managers tell him of situations".

Plaintiff, was involved with the E.E.O.C. on a A.D.A. claim and a law suit (Southern District Of Illinois 96-512 WDS) which resulted in a change of company policy on 4/21/97.

This is the same E.E.O.C. claim that the Company had to issue in 1997 a change of policy which the court feels since it was filed in 1993 had no bearing on Mr. List

.

O.S.H.A. Letter to The Union Pacific Railroad on July 16, 1997 one day before false charges and discharge occur to plaintiff. Plaintiff agrees to settle law suit. RTS fails to live up to the agreement requiring a motion to enforce settlement by plaintiffs attorney on Aug. 19, 1998. R.T.S. was notified by Mail of F.E.L.A. claim on June 19, 1997 one month before discharge.

Mr. List as top Human Resources Officer had to authorize attorney expense, change in company policy, "signed and issued by Mr. List, 4/21/97" and settlement cost with plaintiff and according to his statement had to be aware of government charges from O.S.H.A. from his lower level managers.

Mr. List lied in Grievance Procedures and now, apparently lies under oath to the Court, which the Court failed to note in his disposition of 4/30/99.

Plaintiff's law suit was summarily dismissed by the District Court and upheld by the Court of appeals below.

U. S. CONSTITUTION

Amendment VII:

States, "In suits at common Law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any Court of the United States than according to the rules of common law"

Plaintiff has been denied a JURY trail And A fair Hearing in the Grievance process based on the Letter of Termination And Company's Statements in Hearings and Disposition. The Court's below have concentrated on the Sexual harassment issue and failed to enforce the Collective Bargaining Agreement as Written and Supported By the Contract Interpretation's and have Failed to address the companies False statements. Have failed to show any breakage of any law whether State or Federal by plaintiff. The Company can not show a legitimate non-discriminatory reason for Discharge. (*Adusumilli* 164 F. 3d at 362.)

Prima facie case? Simple, Plaintiff Filed A OSHA case on July 15 1997 Company received Letter July 16, 1997 plaintiff suspended July 17th 1997 Terminated July 31 1997. Workers comp case April 97. EEOC force's change in company policy 4/21/97. Law Suit pending over EEOC (Right to Sue issued) lawyers involved, settled and then company fails to comply with agreement.

REASONS FOR GRANTING THE PETITION

This Court has made finding's in *Reeves v. Sanderson USSC No.99-536* Justice O'Conner page 4 -5 2nd Paragraph " *McDonnell Douglas Corp. v. Green* 411 U. S. (1973) combined with sufficient evidence to disbelieve employer's explanation always creates jury issue of whether employer intentionally discriminated."

Page 5, 1st paragraph " plaintiff's discrediting of employer's explanation is entitled to considerable weight such that plaintiff should not be routinely required to submit evidence over and above proof of pretext".

Justice Ginsburg Concurring:

> "The Court today up holds that an employment discrimination plaintiff may survive judgment as a matter of law by submitting two categories of evidence First, a *prima facie case* as that term is used in *McDonnell v Green (1973)* Second, evidence from which a rational fact finder could conclude that the employer's proffered explanation for its actions was false".

(Page 2) "But the inference remains-unless it is conclusively demonstrated by evidence the District Court is required to credit on a motion for judgment as a matter of law , see *ante,* at 15-16, that discrimination could not have been the defendant's true motivation, etc.".

" liability ordinarily should not be taken from the jury once the plaintiff has introduced the two categories of evidence described above".

Justice Stevens, (January 24,1994)

ABF Freight System v National Labor Relations board USSC 92-1550.

Page 3 "False Testimony in a formal proceeding is intolerable. We must neither reward nor condone such (flagrant affront) to the truth seeking function of adversary proceedings. ..... In any proceedings, whether judicial or administrative, deliberate falsehoods "well may affect the dearest concerns of the parties before a tribunal".

December 10, 1990 Case #89-1166 *Opinion v. Ring Screw Works Ferndale Div.* Justice Stevens: II Section 301 (A) of the LMRA provides a Federal remedy for breech of a collective bargaining agreement. Petitioners present law suit against the employer was for wrongful discharge and is the kind of case Congress provided for in 301 Id at 561-562.

Justice Kennedy March 19, 1991 USSC 89-1027-& 89-1028 *Opinion & W.R. Co. V. Train dispatchers et. al.* Page 10 last paragraph "The RLA governs the formation, construction and enforcement of the labor-management contracts in issue here. It requires carriers and employees to make reasonable efforts " to make and maintain" Collective-Bargaining Agreements 45 U.S.C. 152. First, and to refrain from making changes, in existing agreements except in RLA procedures 45 U.S.C. 152 seventh 156."

The Act " extends both to disputes concerning the making of Collective Agreements and to grievances

arising under existing agreements . *Slocum v. Delaware, L & W.R. Co.,* 339 U.S. 239, 242 (1950).

> As the Law which gives "Legal and binding effect to collective agreements. *Detroit &* Toledo Shore Line R. Co. V. United Transportation Union."

Arch of Illinois v. District 12 U. M.. Workers and Local No. 1392 UMWA. C Case # 95-3233 Seventh Circuit Feb 23, 1996, Page 3 at II.

"We review the district courts grant of summary judgment de Nov and apply the same standard as that employed by the district court. *Jasper Cabinet Co. v. United Steelworkers of America,* 77 F.3d 1025, 1026 (7th Cir. 1996). Summary judgment should be granted if the pleadings and supporting documents "show that there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Fed. R. Iv. P. 56(c)Party opposing the motion must go beyond the pleadings and affirmatively demonstrate a genuine issue of material fact for trial. *Celotex Corp. v, Catrett, 477 U.S.* 317,324 (1986). The Discharge of plaintiff is against the CBA and "cannot be rationally derived from some plausible theory of the general frame work of intent of the agreement." *Ethyl Corp., 768 F.2d* at 186.

The Employer who is held ultimately responsible for working conditions , and it is the employer's actions that must be closely examined. (See generally Employment Discrimination at 839-41 (21)).

Under *Gold Coast Restaurant Corp. V. NLRB, 995 F.2d 257, 265-66 (D.C. Cir. 1993)* A Constructive discharge is established where employer took actions resulting in reduction of employees pay, engaged in disparate disciplinary action and threatened employee.

Illinois Law Pertaining to Fraudulent Misrepresentation Requires Plaintiff to prove the following:

1) The representation must be a statement of material fact.

a) Discharge Letter contains false material facts

2) The representation must be false.

a) RTS and its Supervisors knew the contract and knew that their actions where in violation of the CBA. Representations that Company had been told by UPRR they did not want plaintiff on property and RTS would lose there contract etc. (Mr. List Disposition 4/30/99)

3) The representation must be false : Mr. List Disposition 4/30/99

4) The receiver of the statement must reasonably rely on it's truth. The grievance panel based the termination of plaintiff on Mr. List false statements and threat of the loss of jobs.

5) The Statement must have been with the purpose of cause the receiver to act.

Plaintiff; States there is no other reason or basis, for Mr. List statements to the J AC except to harm plaintiff.

6) The receiver must detrimentally rely on the statement ;

The JAC allowed a discharge in violation of the CBA, and Past Practice and Voted against Plaintiff which is tantamount to abandonment of Plaintiff.

The Courts below **ERRED,**

> Under the Federal Rules of Civil Procedure Article 56 (c) and its amendments. Quote" if there is any general issue as to any material *fact* then Summary Judgment may not be granted".

Humphrey V. Moore 375u. s, 335 (1864)

Conley V. Gibson 355 U. S. 41 (1957)

> Holds that *Steele* and its progeny required fair representation not only in the execution of a CBA but also its enforcement.

In lujan V. National Wildlife Fed'n, 497 U. S. 242, 255 (1986)

> The U. S. Supreme Court stated on a ruling upon a rule 56 motion " a District Court" MUST" resolve any factual issues of controversy in favor of the non-moving party.

RTS and UPMF have continuously had s separate set of Rules for plaintiff including lower pay working conditions and ultimately a fraudulent discharge based on fraud and False threats to the Grievance panels of the loss of contract which would result in loss of many Union jobs. (See JAC Sept. & Mike List Disposition 4/30/99)

> J.A.C. page 384 page 15-16 " we'd be sitting here again trying to figure out just exactly what we can do with Mr. Askew because the Railroad don't want him on our property anymore"

Page 386 lines 3-4 "Her contract is not jeopardized but, ours is".

Mike List deposition 4/30/99.

Page 10 line 14 Question. "Did any one from Union Pacific ever give you any indication that if you didn't discharge Jim Askew that would be grounds for terminating the Contract?

Answer by Mr. List "No"

Page 389 JAC Hearing Sept. 9,1997 Page 389 Line 5

Mr. Wright Question to Mr. List,

When did you send your sexual policy to the local union?

Mr. List " Well it wasn't.""

Plaintiff was Discharged Falsely for Breaking a Collective Bargaining Agreement By breaking a none existing Company Policy and Non-existent Federal and State Law The Courts below: Did not consider Mr. List Deposition.

Plaintiff has not been charged nor convicted in any way on any legal bases of violating any specific law or existing policy of the company or union contract.

The State of Illinois received a protest on plaintiffs unemployment from RTS, the burden of proof was placed on the company and they did not show or ask for a hearing! Mr. List, at the Mo-Kan hearing's denied knowing any thing about it and said he would look in to it. (nothing was ever done because they know its all fraud. (Ill. Finding Attached.) (A-36) Illinois granted Plaintiff unemployment comp.

As there was no evidence of Sexual Harassment provided by the Company.

Section 704 (A) of the title VII of the Civil Rights Act of 1964 as amended prohibits discrimination by an employer against an employee because the employee has opposed any practice made an unlawful practice under Title VII (CRA)

CONCLUSION

The Trial Court was overly concerned about rushing to judgment in this case. The Court erred when it invaded the province of the jury and weighed the evidence to determine the alleged ambiguities of the Collective Bargaining Agreement. The Court prejudicially erred when it denied plaintiff an opportunity to produce evidence of a hostile working environment, and Mr. List disposition that there was sufficient evidence to show fraud, breech of contract, perjury, and Civil conspiracy to deny plaintiff his civil rights by misrepresentation's of the facts of contract and various laws to the court and grievance panels in an effort to harm plaintiff. The Court apparently erred by issuing a *Res. judicata* ruling on evidence apparently not read by the court namely Mr. List deposition.

The Court erred by applying the wrong standards to Plaintiff which were much higher than *THOMAS v. UNITED PARCEL SERVICES INC.* (7TH Cir.) and *REEVES v. SANDERSON, USSC* No. 99-536 (2000) in granting judgments for defendants as a matter of law in that he weighed the evidence and made finding of facts which should have been the province of a trial and findings by a jury.

The Court also erred granting UPRR And the IBT's motion for a summary judgment which Plaintiff has opposed.

Plaintiff requests that this court reverse the judgment of the Courts below and remand all counts for a new trial.

Based on the CBA and Mr. List Testimony Plaintiff would urge a finding for plaintiff and a trail for monetary damages only be set.

Plaintiff respectfully reminds the court he is not a lawyer and requests an oral argument before the court.

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